IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

(1) Rajasthan State Road Transport Corporation Vs. Vinod Kumar & anr.

S.B.CIVIL MISC. APPEAL NO.137/2004

(2) Rajasthan State Road Transport Corporation Vs. Pawan Kumar & anr.

S.B.CIVIL MISC. APPEAL NO.136/2004

Against the common award dated 10.07.2003 made by the Motor Accidents Claims Tribunal, Anupgarh in Claim Case Nos. 14/2002 and 15/2002.

Date of Judgment : 6th September 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Santosh Choudhary for
Mr. Anil Bachhawat, for the appellant
Mr. H.R.Chawla for the respondent (caveator)

BY THE COURT:

These two appeals against the common award dated 10.07.2003 made by the Motor Accidents Claims Tribunal, Anupgarh in Claim Case Nos.14/2002 and 15/2002 relate to the same accident; hence were heard together and are taken up for disposal by this common judgment. The owner of the

bus involved in the accident has preferred these appeals questioning the award of compensation in the sum of Rs.2,01,460/- and Rs.1,73,617/- with interest at the rate of 9% per annum in the respective claim cases assailing the findings on responsibility of the bus driver towards the accident and so also on quantification of compensation.

Brief facts relevant for determination of the questions involved in these appeals are that the claimants Vinod Kumar son of Shivratan and Pawan Kumar son of Shivratan submitted the aforesaid separate claim applications seeking compensation for the injuries and resultant loss sustained by them. The claimant Vinod Kumar in Claim Case No.14/2002 stating his age at 27 years, his profession as "Private Nursing Home RMP", and his annual income at Rs.60,000/- per annum averred that on 26.04.2000 at about 3.15 p.m. he was riding a motorcycle with his brother Pawan Kumar at the Main Market Circle, Anupgarh; the motorcycle was hit by a bus bearing registration No.RJ31 P0422 belonging to Rajasthan State Road Transport Corporation (RSRTC) and driven by the non-applicant No.1 Karni Singh; and he sustained injuries including fracture of bones of both his legs. The claimant made a claim in the sum of Rs.5,23,000/- with the submissions that he was working as private doctor and was

earning about Rs.60,000/- per annum and had to remain under treatment for five months and had to undergo operations 4-5 times; that he was admitted to Anupgarh Government Hospital but was referred to Bikaner and then to Sriganganagar. The claimant claimed Rs.2.20 lacs allegedly spent on treatment, diet and attendants, Rs.3 lacs towards pains and sufferings and Rs.3 thousand for property damage of his wrist watch and clothings. The driver of the offending vehicle remained ex parte and the claim was contested by the owner of the vehicle RSRTC denying generally the claim averments and with the submissions that the accident was caused by rash and negligent driving of the motorcycle in the main market at the cross roads though the bus was at a slow speed having just negotiated a speed breaker.

The other claimant Pawan Kumar in Claim Case No.15/2002 stated his age at 36 years, similar profession as "Private Nursing Home RMP" and similar earning at Rs.60,000/- per annum; and while narrating the same accident claimed compensation in the sum of Rs.8,74,000/- with the submissions that he sustained serious head injury and remained hospitalised in Satluj Hospital, Ludhiana for 12 days and had to undergo various operations and the doctor had advised him medicines for five years. The

claimant submitted that on account of continuous treatment his work efficiency was reduced causing loss of Rs.3 lacs; Rs.2.71 lacs were spent on treatment; and claimed further Rs.3 lacs towards pains and sufferings and Rs.3 thousand for property damage of wrist watch and clothings. This claim application was also contested by the owner of the bus with the same averments of general denial and the assertion that the accident was caused for the fault of the motorcyclist.

Though separate issues were framed, however, trial of these two claim cases was consolidated and in oral evidence, the claimants examined themselves as AW-1 and AW-2 respectively. The claimants also produced documentary evidence including injury reports, disability certificate and medical bills that shall be referred hereafter. The non-applicants examined three witnesses namely Laxman Singh, their Office Superintendent at Anupgarh as NAW-1, Mohanlal Arora, their Assistant Traffic Inspector as NAW-2 and Narendra Ahuwalia, their another Assistant Traffic Inspector at Anupgarh as NAW-3.

Learned Judge of the Tribunal found on issue No.1 that the accident was caused by rash and negligent driving of the

bus and rejected the case of the non-applicants in issue No.3 that the accident was caused for any fault of motorcyclist. On quantum of compensation, that has been seriously put into contention in these appeals, the learned Judge observed in relation to the claimant Vinod Kumar in Claim Case No.14/2002 that he was 25 years of age, he remained hospitalised for six months, he alleged his working as RMP doctor but was unable to name the University he obtained degree from nor had produced any income proof. Thereafter, learned Judge took the monthly income of the claimant at Rs.3,000/- and annual income at Rs.36,000/-; then deducted 1/3rd and then applied a multiplier of 17 for the alleged loss to the claimant and his family at Rs.24,000/- per annum and then taking his disablement at 20% concluded that the claimant was entitled for Rs.81,600/- towards such loss. The learned Judge further allowed Rs.36,000/- for six months' hospitalisation, then Rs.24,000/- for 12 months' bed rest, then Rs.39,860/- for medical expenditure, further Rs.5,000/- for transportation, Rs.10,000/- for pains and sufferings and Rs.5,000/- for dietary expenditure and in this manner found the claimant Vinod Kumar entitled for compensation in the sum of Rs.2,01,460/-.

In relation to the other claimant Pawan Kumar in Claim Case No.15/2002, the learned Judge referred to his age at 35 years and hospitalisation for 22 days. The learned Judge referred to his statement of working as RMP doctor but his too being unable to state the University from which he obtained degree nor having produced any income certificate. In this claim case also, the learned Judge took annual income of the claimant at Rs.36,000/- and then concluded on the basis of the prescription slips and medical reports that he remained under treatment for one year and was still under treatment and was required to visit Ludhiana regularly. The learned Judge allowed Rs.4,400/- for 22 days' hospitalisation, Rs.24,000/- for 12 months' loss of income due to bed rest, Rs.75,217/- for treatment expenditure, Rs.5,000/- for transportation, Rs.10,000/- for pains and sufferings, Rs.5,000/- for dietary expenditure and then Rs.50,000/- for future treatment and in this manner found the claimant-Pawan Kumar entitled for compensation in the sum of Rs.1,73,617/-. In both the cases the learned Judge allowed interest at the rate of 9% per annum from the date of filing of claim application.

The award aforesaid made in both the claim cases has been assailed by the owner of the bus in these appeals. Learned counsel for the appellant has referred to the

considerations adopted by the learned Judge of the Tribunal and submitted that the learned Judge has proceeded to award compensation even twice over in both the cases on different heads and the award in its totality remains highly excessive. Learned counsel also submitted with reference to the site plan that the motorcycle dashed against a slow moving bus in a crowded place and the accident occurred for the sole negligence of the motorcyclist and, therefore, his claim ought to have been rejected altogether. Learned counsel further submitted in relation to claimant Pawan Kumar that the award of future treatment remains absolutely unjustified as the said claimant has not proved any such persistent ailment for which he was required to be treated in future and in fact he had effectively answered the questions in cross-examination showing no traces of any after-effects of head injury. Per contra, learned counsel for the respondents has supported the impugned award with the submissions that in view of extensive injuries suffered by the claimants, the award of compensation is towards the minimum loss suffered by them and calls for no interference. Learned counsel submitted that the Tribunal has taken income of the injured only at Rs.3,000/- per month that remains rather on the lower side. In relation to the claimant Pawan Kumar, learned counsel submitted that he had specifically deposed about the requirement of his future

treatment and there being no cross-examination on that score, provision for future treatment has rightly been allowed by the Tribunal and the ultimate award made by the Tribunal is not excessive but is on the lower side. For the liability towards accident, learned counsel submitted that the case sought to be set up by the appellant that the bus crossed a speed breaker just before accident is not supported by the site plan prepared by the police Ex.30 and no independent witness has been produced by the non-applicants and moreover, the driver of the bus concerned has not been produced in evidence and, therefore, the finding by the Tribunal on the fault of the bus driver calls for no interference.

Having heard learned counsel for the parties and having scanned through the entire record, this Court is satisfied that the award on its quantification of compensation remains absolutely unjustified and highly excessive that cannot be approved and deserves suitable downward revision.

So far the liability towards accident is concerned, though it has been argued on behalf of the appellant that the accident was caused by negligence of motorcyclist, the fact remains that the accident occurred at cross-roads and nothing specific is discernible from a cryptic site plan prepared

by the Investigating Agency Ex.30. It was required of the non-applicants to have produced relevant witness i.e. driver of the offending bus to rebut the evidence of the claimants. The non-applicants have examined three of their own employees who remain absolutely irrelevant and worthless witnesses and it has been suggested on the basis of a report prepared by NAW-3 Narendra Ahuwalia that the accident occurred for the fault of motorcyclist. No independent witness has been produced and for non-production of driver of the bus an adverse inference is definitely required to be drawn against the non-applicants. In this view of the matter, though the observations by the learned Judge of the Tribunal regarding finding of negligence of bus driver with reference to the fact that challan was filed after investigation against the bus driver and that if challan was wrongly filed, a complaint could have been made by the bus driver do not appear to be sound considerations; but in the overall circumstances, there appears no reason to disturb the finding on issue No.1 and 3 so as to hold the accident to have occurred for the fault of motorcyclist.

However, on the question of quantum of compensation, this Court is clearly of opinion that the awards in both the

claim cases remain too excessive and unjustified and call for slicing down.

The claimants, brothers, alleged their respective age at 25 years and 36 years; both of them alleged practicing as private doctors and managing a private nursing home; but both of them were unable to state in their cross-examination the name of university they obtained any degree from and both of them neither produced any certificate of their qualifications nor any licence to practice as 'Registered Medical Practitioner'. It is apparent that assertion of income and source thereof by the claimants has been tainted with falsehood; and it requires rather deeper investigation as to how the two claimants have alleged themselves practicing as 'RMP' doctors and managing private nursing home? However, for that purpose, the appellant is left free to take up the matter with the State Government for proper enquiry. So far the present appeals are concerned, suffice it to say that the claimants do not appear correct in their assertion of income at Rs.5,000/- per month each while practicing as doctors; and even the estimate put by the learned Judge of the Tribunal of their income at Rs.3,000/- per month appears to be on the higher side.

Furthermore, so the claimant Vinod Kumar is concerned, there is a discrepancy about his age that has been stated at 25 years in the injury report Ex.32 (placed in the record of Claim Case No.15/2002) as on 26.04.2000 but then a so-called Medical Board that has proceeded to certify 20% permanent disability of limbs has stated his age at 30 years as on 10.03.2003. The claimant while filing his claim application on 23.03.2002 has stated his age at 27 years. It is apparent that the claimant has not come out with his correct age and the learned Judge of the Tribunal without scrutinizing the record has proceeded to apply a multiplier of 17 to a strange multiplicand of Rs.24,000/- in an absolutely illogical manner.

Even the certification of 20% disability under the certificate Ex.1 does not inspire confidence. The claimant has of course been shown to have suffered fracture of tibia and fibula bones of both his legs and, therefore, the case could be considered of sustaining of two grievous injuries but there is no other evidence on record to believe that for such fractures he shall carry 20% permanent partial disablement. Neither the alleged Medical Board is shown to be comprising of any of his treating doctors nor the concerned doctor of Gupta Nursing Home wherefrom the claimant received treatment has been produced in evidence. It were not a case of permanent

partial disablement and there appears no justification for the learned Judge to have awarded a whopping Rs.81,600/- towards such so-called loss of income due to disablement and this amount deserves to be disallowed altogether.

The learned Judge of the Tribunal has further proceeded to award Rs.36,000/- for six months' hospitalisation at the rate of Rs.200/- per day that also appears unjustified in the fact situation of this case particularly when the amount towards loss of income, treatment and diets has been allowed separately. Such amount of Rs.36,000/- also deserves to be disallowed. The amount of Rs.24,000/- for 12 months' bed rest also does not appear justified and taking the income of the claimant at about Rs.2,100/- per month, it appears appropriate to allow six months' loss of income at Rs.12,600/-.

The amount awarded even on treatment expenditure is not justified. The claimant has produced certain slips and bills from Ex.2 to Ex.19 and the learned Judge without even looking into them seems to have simply put the sum total thereof and has allowed Rs.39,860/-. Ex.2 is a plain paper slip dated 22.06.2000 stating Rs.3,000/- in the name of Vinod Kumar at bed No.21 and Ex.3 is another plain paper slip dated

17.06.2000 stating Rs.5,000/- in the name of Vinod Kumar; but it is not borne out from these two kuchcha slips as to who has been paid and for what? It was entirely unjustified on the part of the Tribunal to have taken these two absolutely useless slips into account. So far the nursing home is concerned, there are two specific bills Ex.15 and Ex.16, dated 15.05.2000 for Rs.17,250/- and dated 25.06.2000 for Rs.8,375/- respectively stating all charges for room rent, operations, dressings, plaster etc. The claimant has made a cryptic statement that Ex.2 to Ex.19 were the slips of his treatment and of medicines. As noticed, Ex.2 and Ex.3 kuchcha slips have no evidentary value; and cannot be considered to be doctor's consultation charges nor the figures stated therein could be allowed. Similarly, Ex.18 is a paper-slip given on the letter head of 'The Grain Merchants Association, Anupgarh' for the alleged jeep hire charges and for medicines at Rs.1,800/-. This slip is also absolutely vague and uncertain and it cannot be co-related with the treatment expenditure. The amount stated in these three slips Ex.2, Ex.3 and Ex.18 definitely deserves to be deducted and, therefore, treatment expenditure allowed at Rs.39,860/- deserves to be reduced to Rs.30,060/-.

The claimant has alleged to have remained hospitalised at Gupta Nursing Home, Sriganganagar for six months and thereafter having taken rest at home. There is no evidence on record about regular transportation to Sriganganagar and the learned Judge was unjustified in allowing Rs.5,000/- in the name of regular visits to Sriganganagar. A reasonable amount in the sum of Rs.2,000/- only could be allowed on this score. Other compensation in the sum of Rs.10,000/- for pains and sufferings and Rs.5,000/- for dietary expenditure may be retained. In this manner, the claimant Vinod Kumar is entitled for compensation in the sum of Rs.59,660/- (12,600/- + 30,060/- + 2,000/- + 10,000/- + 5,000/-) and the award made by the Tribunal in the sum of Rs.2,01,460/- being highly excessive deserves to be modified.

In the case of other claimant Pawan Kumar, the award is equally unjustified. The learned Judge has proceeded to allow Rs.4,400/- for 22 days' hospitalisation and then further Rs.24,000/- for 12 months' bed rest. Such quantification is totally baseless. As aforesaid, this claimant has also failed to show his source of income and the assertion of his practicing as private doctor does not appear correct for his being even unable to state source of degree, if at all he had any; nor his having produced any certificate of practice.

He had of course remained hospitalised for 22 days and taking an estimate of income at Rs.2,100/- per month, he could be allowed loss of income maximum for a month and there appears no reason to allow income loss beyond Rs.2,100/-.

In this claim case also, the learned Judge has proceeded to simply sum up the vouchers of whatever nature produced and has failed to consider that there are several receipts towards payments made by the claimant; but then final bill Ex.69 in the sum of Rs.26,275/- deducts the advance payment of Rs.20,000/- and the net due payment at Rs.6,275/- is made under the receipt Ex.70. The learned Judge seems not to have differentiated between the bills and the receipts and has simply proceeded to sum up whatever has been produced on record. The amount stated in the last bill Ex.69 (Rs.26,275/-) deserves to be directly deducted as the receipts in relation to the amount stated therein, namely receipt Ex.40 for Rs.2,000/-, receipt Ex.47 for Rs.18,000/- and receipt Ex.70 for Rs.6,275/- have already been accounted for. The learned Judge has allowed Rs.75,217/- towards treatment expenditure that deserves to be allowed only at Rs.48,942/-.

The amount allowed towards transportation at Rs.5,000/- and, looking to the nature of injury, towards pains and sufferings at Rs.10,000/- could be retained but at the same time looking to the nature of injury and period of hospitalisation dietary expenditure at Rs.5,000/- does not appear appropriate and the same deserves to be allowed only at Rs.2,000/-maximum

There appears absolutely no justification for allowing Rs.50,000/- towards future treatment in this case. There is no other evidence available on record that could be indicative of requirements of such future treatment for which exorbitant amount of Rs.50,000/- is required to be allowed. The suggestion of the learned counsel for the claimant that future treatment deserves to be allowed merely because there had not been any cross-examination on such statement of claimant cannot be accepted. Mere bald statement of the requirement of future treatment is of no consequence nor future treatment expenditure could be allowed on that basis even if not put to cross-examination. In the fact situation of this case, such fact was required to be established by cogent corroborative medical evidence.

The evidence on record does not corroborate the allegation of the claimant of his having been advised treatment for five years nor any such evidence has been produced that could vouch for future treatment expenditure at Rs.50,000/-. The medical evidence on record, instead of supporting the case of the claimant of requirement of such expensive future treatment, rather demolishes his case. Discharge summary Ex.35 dated 08.05.2000 and prescription slip Ex.36 containing prescriptions on 29.05.2000, 29.06.2000, 15.10.2000, 05.02.2001 and 01.10.2001 show perfect improvement in the health of the claimant from the month of June 2000.

The notings and prescriptions made by the treating doctor on the prescription slip Ex.36 show that the claimant had recovered very well and he was advised only a tablet 'Epsolin 100 mg; 1-2' from 15.10.2000 onwards whose price could be noticed from the previous bills (vide Ex.67) at Rs.5.50 for 10 tablets. Therefore, even if the claimant were to take three of such tablets daily for another year, the expenditure would only be about Rs.600/-! The award in the sum of Rs.50,000/-for future treatment remains unjustified and the claimant could, at the most, be allowed Rs.600/- on that count. Therefore, the claimant in Claim Case No.15/2002 is entitled

for compensation in the sum of Rs.68,642/- (2,100/- + 48,942/- + 5,000/- + 10,000/- + 2,000/- + 600/-) as against the amount of Rs.1,73,617/- allowed by the Tribunal.

The Tribunal has proceeded to allow interest at the rate of 9% per annum in the award made in the year 2003 and in the overall circumstances this Court is of opinion that interest ought not to have been allowed beyond the rate of 7.5% per annum in these cases. The rate of interest allowed by the Tribunal also deserves to be modified accordingly.

As a result of the discussion aforesaid, these appeals succeed and are partly allowed. The award in both the claim cases is modified thus:

(I) In CMA No.137/2004 relating to Claim Case No.14/2002 the award in the sum of Rs.2,01,460/- with interest at the rate of 9% per annum from the date of filing of claim application is modified and the claimant is allowed compensation in the sum of Rs.59,660/- with interest at the rate of 7.5% per annum from the date of filing of claim application;

II) In CMA No.136/2004 relating to Claim Case No.15/2002 the award in the sum of Rs.1,73,617/- with interest at the rate of 9% per annum from the date of filing of claim application is modified and the claimant is allowed compensation in the sum of Rs.68,642/- with interest at the rate of 7.5% per annum from the date of filing of claim application;

III) In the circumstances of these cases, there shall be no order as to costs.

IV) The amount, if any, remaining to be paid under the modified award shall be deposited by the appellant-RSRTC within 30 days from today with the Tribunal and shall be disbursed in the same manner and proportion as directed under the impugned award.

(DINESH MAHESHWARI),J.

MK